

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

OPEN MEETING ITEM

ARIZONA CORPORATION COMMISSION



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AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: April 29, 2002

DOCKET NO: S-03439A-00-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

TOWER EQUITIES, INC  
(APPLICATION FOR REHEARING)

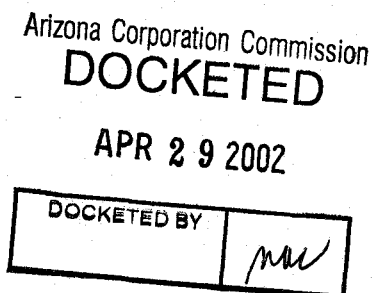
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 8, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 23, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.



BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF:

7 TOWER EQUITIES, INC.  
8141 N. Main Street  
Dayton, OH 45415-1747

9 PHILIP A. LEHMAN  
Tower Equities, Inc.  
8141 N. Main Street  
Dayton, OH 45415-1747,

10 Respondents.

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DECISION NO. \_\_\_\_\_

**ORDER**

11  
12 Open Meeting  
13 May 23, 2002  
Phoenix, Arizona

14 **BY THE COMMISSION:**

15 **FINDINGS OF FACT**

16 1. On February 22, 2002, the Arizona Corporation Commission ("Commission") issued  
17 Decision No. 64559 ("Decision") in the above-captioned matter.

18 2. On April 11, 2002, pursuant to A.A.C. R14-3-112, Tower Equities, Inc. ("Tower") and  
19 Mr. Philip A. Lehman (collectively "the Respondents") filed with the Commission an Application for  
20 Rehearing and Review ("Application") of the Decision on the grounds that the Decision is not  
21 justified by the evidence and is contrary to law.

22 3. Although it appeared that Tower's and Mr. Lehman's Application was not timely filed,  
23 Respondents stated that their attorneys had not been served with a copy of Decision No. 64559 and  
24 attached affidavits which attested to the non-delivery of the Decision at their offices.

25 4. On April 19, 2002, the Commission's Securities Division ("Division") filed its  
26 Response to the Respondent's Application and requested that the Application be denied on the basis  
27 that the Decision is based on the evidence and is not contrary to law. The Division pointed out that  
28 A.R.S. § 12-901 renders moot the question of the exact date of service if the Commission treats the

1 Application as timely filed. The Division also filed an affidavit of service that indicated that personal  
 2 service of Decision No. 64559 had been made upon local counsel on April 17, 2002.

3 5. For purposes of this proceeding, Respondents' Application should be treated as timely  
 4 filed.

5 6. Upon review of the Decision, the Division's Response to the Application is well made  
 6 and should be adopted.

### 7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
 9 Arizona Constitution, A.R.S. §§ 44-1901 et seq. and A.A.C. R14-3-112.

10 2. The Respondents have not demonstrated adequate grounds to justify further review of  
 11 the Decision pursuant to A.A.C. R14-3-112.

12 3. The Application of Tower and Mr. Lehman should be denied.

### 13 ORDER

14 IT IS THEREFORE ORDERED that the Application for Rehearing and Review of Tower  
 15 Equities, Inc. and Mr. Philip Lehman is hereby denied.

16 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

17 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

18  
 19  
 20 CHAIRMAN

COMMISSIONER

COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 22 Secretary of the Arizona Corporation Commission, have  
 23 hereunto set my hand and caused the official seal of the  
 24 Commission to be affixed at the Capitol, in the City of Phoenix,  
 25 this \_\_\_\_ day of \_\_\_\_\_, 2002.

25 BRIAN C. McNEIL  
 26 EXECUTIVE SECRETARY

26 DISSENT \_\_\_\_\_

27 MES:mlj

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SERVICE LIST FOR: TOWER EQUITIES, INC.

DOCKET NO. S-03439A-00-0000

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